



In their objection, the defendants state that they were not made aware of plaintiffs' intention to use an expert witness in this case until well after the time required by the scheduling order to be notified of such fact. Defendants assert that they have not had time to depose the proposed expert, nor time to secure an expert of their own. As a result, defendants claim that they would be severely prejudiced if this witness were allowed to testify.

It appears that the expert is offered to show that someone has tampered with the tape. In responding to the defendants' objection, plaintiffs submit various arguments, including that they spent time and money in securing the expert/expert report and that they could not have had the video analyzed any faster.

Rule 26(a)(2)(C) requires parties to disclose written reports of their proposed expert witnesses "at the times and in the sequence directed by the court." Parties that do not comply with the disclosure requirement face sanctions under Rule 37(c)(1), which reads in relevant part: "A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), ... is not, unless such failure is harmless, permitted to use as evidence at a trial, ... any witness or information not so disclosed."

The trial date in this matter is February 26, 2007. During the hearing, the Court informed the plaintiffs that if they wanted to use an expert, the trial date would need to be continued so that the defendants could take Mr. Tansey's deposition and seek a rebuttal expert, if needed. The plaintiffs stated to the Court that they did not want to continue the

trial and that they would withdraw the expert designation, i.e. they would not use the expert, Michael Tansey, during the trial. Accordingly, since the plaintiffs have withdrawn their expert, defendants' objection [Doc. 98] is **DENIED as MOOT**.

**IT IS SO ORDERED.**

**ENTER:**

s/Thomas W. Phillips  
UNITED STATES DISTRICT JUDGE